Decision 03-10-022 October 2, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.	Rulemaking 01-10-024 (Filed October 25, 2001)

ORDER DENYING REHEARING OF DECISION (D.) 03-02-072

In this decision, we deny the application filed by Pacific Gas and Electric Company ("PG&E") for rehearing of Commission Decision (D.) 03-02-072 ("Decision"). The Decision was issued as part of the Commission's rulemaking on procurement issues (R.01-10-024) and responded to a memorandum from the California Department of Water Resources ("DWR") that the Commission consider modifying D.02-09-053. In D.02-09-053, the Commission allocated DWR contracts to the resource portfolios of PG&E, Southern California Edison Company ("Edison") and San Diego Gas and Electric Company ("SDG&E"). The DWR memorandum requested that D.02-09-053 be modified to add four biomass contracts and that these additional contracts be allocated among one or more of the three utilities.

On February 27, 2003, the Commission voted out the Decision, which modified D.02-09-053 to add the four biomass contracts and allocated three contracts, totaling 40 MW, to PG&E and one contract, totaling 8 MW, to Edison. PG&E filed a timely application for rehearing. In its rehearing application, PG&E alleges that the Decision: (1) unlawfully modified DWR's adopted 2003 revenue requirement; (2) circumvented the bidding process adopted in D.02-08-071 for the addition of renewable resources; (3) failed to address major legal issues raised by

PG&E; and (4) improperly treated DWR's memorandum as a petition for modification of D.02-09-053. The California Biomass Energy Alliance ("CBEA") filed a response opposing PG&E's rehearing application. DWR also filed a response opposing PG&E's rehearing application.

We have carefully considered the arguments presented by PG&E and are of the opinion that no grounds for rehearing have been demonstrated. Therefore, PG&E's application for rehearing of the Decision is denied.

I. DISCUSSION

A. The Decision does not modify DWR's 2003 Revenue Requirement Determination.

DWR's memorandum notes that the costs associated with the biomass contract were not included in DWR's 2003 revenue requirement. (DWR Memorandum, January 7, 2003, p. 2.) PG&E contends that by now allocating these four contracts to the utilities and allowing DWR to collect a remittance for the energy delivered under the contracts, the Decision increases DWR's 2003 revenue requirement and unlawfully modifies the 2003 DWR revenue requirement decision, D.02-12-045. (PG&E App., p. 3.) Consequently, PG&E maintains that the Decision violates Water Code section 80110, sections 4.1 and 4.2 of the Rate Agreement between the Commission and DWR, and Public Utilities Code section 1708. PG&E's assertions are without merit.

Water Code section 80110 states, in relevant part: "The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with [Water Code] Section 80134, and shall advise the commission as the department determines to be appropriate." (Water Code, § 80110.) Any "just and reasonableness" review shall be conducted by DWR before it includes any cost in its revenue requirement. (*Id*.; see also Rate Agreement, § 4.2.) Pursuant to the Rate Agreement, DWR shall provide its revenue requirement to the Commission at least annually, and may revise its

revenue requirement if it believes that its current revenue requirement is not sufficient to meet its obligations under the financing documents. (Rate Agreement, § 4.1, subd. (b).)

If PG&E's assertions were true, then any deviation from DWR's projected revenue requirement would result in a new revenue requirement determination. This is simply not the case. As noted above, under the Water Code and the Rate Agreement, DWR is not required to modify its annual revenue requirement determination unless it determines that the current remittance amounts are insufficient to meet its financial obligations. Pursuant to D.02-12-045, DWR would be supplying approximately 21,835 GWh to PG&E. (D.02-12-045, Appendix A.) The Decision would increase this amount by 40 MWh. It is unreasonable to maintain that this slight change would require DWR to modify its revenue requirement determination. Since the revenue requirement is comprised of both a forecast of DWR's costs for the current period, as well as a true-up of the prior revenue requirement periods, slight changes in costs or terms of contracts do not necessarily mean that a new revenue requirement determination will be required. In this instance, PG&E's remittance per MWh to DWR for power provided under DWR contracts has not changed. For the reasons above, addition of the four biomass contracts did not modify DWR's 2003 revenue requirement and there is no violation of Water Code section 80110 or the Rate Agreement.

Since there is no modification of DWR's 2003 revenue requirement determination, there is no modification of D.02-12-045. Accordingly, PG&E's assertion that the Decision violates Public Utilities Code section 1708 is equally without merit.

B. The Decision does not circumvent Commission Decision 02-08-071.

PG&E maintains that by allocating the biomass contracts among the utilities, the Decision has permitted the "contracts to circumvent the competitive bidding process approved in D.02-08-071." (PG&E App., p. 6.) PG&E states that

three of the biomass projects had participated in its Request for Offers ("RFO") process, but were unsuccessful. It argues that by permitting these contracts to now be allocated to PG&E, the biomass projects will, in effect, be treated as if they had won the RFO.

PG&E's arguments presuppose that procurement of renewable resources may only be achieved through the interim procedures adopted in D.02-08-071. This is not the case. The procedures adopted in D.02-08-071 apply to solicitation of new contracts for renewable energy. These new contracts would be executed by the utilities, with DWR serving as the creditworthy party under limited conditions, and be for 5, 10 or 15 year terms. In this instance, we allocated biomass contracts that were entered into by DWR prior to the adoption of D.02-08-071. Allocation of existing DWR contracts are not part of the interim procedures. Thus, D.02-08-071 is not applicable.

PG&E further contends that the Decision is contrary to the results reached in Resolution E-3805.[1] This contention is also without merit. Resolution E-3805 simply approves PG&E's request to enter into the renewable energy contracts it selected pursuant to D.02-08-071. As discussed above, D.02-08-071 is not applicable here. Thus, the Resolution's determination that PG&E properly declined to enter into contracts with the biomass projects is not relevant to allocation of existing DWR contracts. Moreover, as noted above, these DWR contracts are not the same as contracts entered into by PG&E as a result of its RFO. Consequently, the Decision is not contrary to Resolution E-3805.

C. The Commission properly considered all material issues raised by parties.

PG&E claims that the Decision fails to address legal issues that were raised by PG&E in its comments to the draft decision. (PG&E App., p. 8.) Pursuant to Public Utilities Code section 1705, Commission decisions shall

[1] In its rehearing application, PG&E incorrectly refers to this Resolution as E-2805.

contain "separately stated, findings of fact and conclusions of law . . . on all issues material to the order or decision." (Pub. Util. Code, § 1705.) Section 1705 does not require the Commission to respond to all comments on a proposed decision. Instead, it only requires sufficient findings and conclusions to assist the court in ascertaining that the Commission acted properly and to assist parties in preparing for rehearing or court review. (See, e.g., *California Manufacturers Assn. v. Public Utilities Commission* (1979) 24 Cal.3d 251, 258-259; *Greyhound Lines, Inc. v. Public Utilities Com.* (1967) 65 Cal.2d 811, 813.) In this instance, we have provided sufficient findings and conclusions to support our decision to allocate the biomass contracts to PG&E and Edison. For example, Findings of Fact 3 and 4 state the policy reasons that support allocation of the biomass contracts. Additionally, the Decision discusses the benefits of allocating the biomass contracts. Thus, we have complied with the requirements of Section 1705.

The issues raised in PG&E's comments concern its belief that the inclusion of the four biomass contracts would modify DWR's 2003 revenue requirement and D.02-12-045. As discussed above, PG&E is incorrect in its view that our Decision modified DWR's revenue requirement. Accordingly, the issues raised by PG&E in its comments are not material to the Decision and did not need to be addressed.

D. The Commission properly modified D.02-09-053 upon consideration of DWR's request.

Finally, PG&E asserts that the Commission mischaracterizes DWR's memorandum as a petition for modification.[2] Consequently, it maintains that no petition to modify was outstanding when D.02-03-072 was issued. (PG&E App., p. 9.) PG&E's statements fail to clearly specify the grounds for finding legal error. However, they appear to suggest that, absent a petition to modify, the

[2] As part of this assertion, PG&E relies on letters sent from DWR to Edison's counsel. These letters, however, are not part of the evidentiary record and thus were not considered.

Commission had no basis for modifying D.02-09-053. Such a suggestion is without merit.

The Decision does not characterize DWR's request as a petition to modify. Instead, it clearly notes that DWR had requested that the Commission *consider* modifying D.02-09-053 to add the four biomass contracts.[3] (See, D.03-02-072, pp. 2, 7, 10 (Finding of Fact 1).) Upon consideration of DWR's request, we determined, on our own motion, to modify D.02-09-053 and add the contracts. (D.03-02-072, p. 10.) Such an action is permitted under Public Utilities Code section 1708, which states: "The Commission may *at any time*, upon notice to the parties, and with opportunity to be heard . . ., rescind, alter, or amend any order or decision made by it." (Pub. Util. Code, § 1708 (emphasis added).) Section 1708 does not limit the Commission's ability to modify a decision only in response to a petition to modify. Thus, we may lawfully modify D.02-09-053 on our own, and DWR's memorandum provided sufficient justification to do so.[4]

II. CONCLUSION

PG&E has failed to demonstrate grounds for finding legal error in Commission Decision (D.) 03-02-072.

[3] An ALJ ruling had previously determined that DWR's request, although technically not a petition to modify, would be treated as one for purposes of allowing parties to comment. (*Administrative Law Judge's Ruling on Department of Water Resources' Request to Modify Decision 02-09-053*, January 17, 2003, p. 2.)

[4] PG&E also contends that the reduction in the comment period to two days was a violation of fairness and due process. (PG&E App., p. 9, fn. 5.) However, a shortened comment period does not, in itself, violate due process rights, and PG&E does not provide any authority to support such a position. Parties were afforded an opportunity to comment on DWR's memorandum. While other parties did, PG&E, by its own admission, declined to do so. (PG&E App., p. 8.) Moreover, PG&E has also failed to show that the 48 hour period, by itself, violates due process. Indeed, the Decision did not raise any new issues that were not present when parties submitted their initial comments. Accordingly, PG&E's contention is without merit.

THEREFORE, IT IS ORDERED:

Rehearing of D.03-02-072 is denied.

This order is effective today.

Dated , October 2, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I dissent.

/s/ LORETTA M. LYNCH
Commissioner